Public Finance Bhd v Public Prosecutor

HIGH COURT (SIBU) – CRIMINAL APPLICATION NO 4 OF 1988
CHONG SIEW FAI J
7 OCTOBER 1988

Criminal Procedure – Appellant not a party to criminal proceedings in which appellant's car was forfeited by magistrate's court – Whether appellant could appeal against forfeiture order – Criminal Procedure Code, s 307(i)

BN, an accused, was charged and found guilty of two offences under s 33 of the Commercial Vehicle Licensing Board Act 1987 and s 90 of the Road Transport Act 1987 in the magistrate's court. He was fined and a vehicle no KK4790 owned by the applicant/appellant was forfeited. By a notice of motion, the applicant applied for enlargement of time for filing a petition of appeal so as to set aside the forfeiture order made by the magistrate's court against the said vehicle. The sole issue before the court was whether the applicant, who was not an accused in the criminal proceedings in the magistrate's court, could appeal.

Held, dismissing the application:

It is clear that the applicant was not an accused in the criminal proceedings nor was it a party to the criminal case or matter. As such, under the terms of s 307(i) of the Criminal Procedure Code the applicant cannot appeal against the forfeiture order.

Cases referred to

1 *Koay Ban Siew* v *PP* [1948] MLJ 54 (folld)
2 *Re Hillman Minx No SU 3503* [1962] MLJ 250 (refd)
3 *R* v *Maidstone Crown Court, ex p Gill* (1986) Crim LR 737 (refd)
4 *The 'Andara'* [1978] 2 MLJ 190 (refd)

Legislation referred to

Criminal Procedure Code s 307(i)

John Shek for the applicant.
Ahmad Zaki bin Hj Husin (Senior Federal Counsel) for the respondent.

Chong Siew Fai J: By a notice of motion, the applicant, The Public Finance Berhad, styling itself as the 'appellant' applies for enlargement of time for filing a petition of appeal on the ground that it was erroneously filed in the High Court, Sibu when it should have been lodged with the clerk of the magistrate's court at Sibu and that by the time the mistake was discovered the prescribed time for lodging the petition had expired.

The facts as disclosed in the affidavit made in support of the motion show that an accused, one Beh anak Nyelang, was charged and found guilty of two offences under s 33 of the Commercial Vehicle Licensing Board Act 1987 and s 90 of the Road Transport Act 1987 in the magistrate's court at Sibu. He was fined and a vehicle No KK 4790 owned by the applicant was forfeited. It is clear that the applicant was not an accused in the criminal proceedings. It is equally plain from a copy of the purported petition of appeal (exh 'A' annexed to the affidavit made in support) that the sole concern of the applicant is to set aside the forfeiture order made by the magistrate's court against the said vehicle. The sole issue is: Can the applicant, who was not an accused in the criminal proceedings in the magistrate's court, appeal as the applicant purported to do? Section 307(i) of the Criminal Procedure Code, so far as is relevant, provides:

> ... any person who is dissatisfied with any judgment, sentence or order pronounced by any magistrate's court in a criminal case or matter to which he is a party may prefer an appeal ...'

On the evidence as adduced, the applicant was not a party to the criminal case or matter and therefore, in my opinion, cannot appeal. *Koay Ban Siew* v *PP*[1] is a case in point. In that case the appellant Koay Ban Siew appealed against a forfeiture order of a junk of which he was the owner. Koay was not a party to the original prosecution in which the forfeiture order was made. On a consideration of s 302 of the Settlements Criminal Procedure Code (repealed) the relevant provision of which so far as concerning the instant case is materially similar to s 307(i) of our present Criminal Procedure Code, it was held that the appellant had no right of appeal against the forfeiture order. After reciting the relevant part of s 302, Murray-Aynsley CJ said:

> It is abundantly clear that this section limits the right of appeal to the High Court in a criminal case or matter to a party to the case or matter.

A little later, he went on:

> ... we must decide that the 'appellant' had no authority to file his petition of appeal to the High Court and that in fact there was no valid appeal before that court at any time.

After considering s 307(i) of our present Criminal Procedure Code and on the authority of *Koay Ban Siew* v *PP*,[1] I hold that the 'appellant' in the instant case has no right of appeal.

The appeal is invalid and the motion before me is misconceived and must be dismissed. I should perhaps add, however, that procedurally a person in the position of the appellant in this motion whose property is affected by a forfeiture order of a court is, in my judgment, not without a remedy. He can, in a proper case, apply for relief by way of judicial review. See, for example, *Re Hillman Minx No SU 3503*;[2] *R* v *Maidstone Crown Court, ex p Gill*;[3] *The 'Andara'*.[4]

Application dismissed.

Solicitors: *John Shek & Co.*

Reported by *Ng Sheau Jiuan*